



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|------------------------|---------------------|------------------|
| 10/577,084 | 05/18/2006 | Gwénaëlle Bestel-Corre | 2912956-027000 | 2084 |

84331 7590 08/18/2009
Baker Donelson Bearman, Caldwell & Berkowitz, PC
555 Eleventh Street, NW, Sixth Floor
Washington, DC 20004

| |
|----------|
| EXAMINER |
|----------|

VOGEL, NANCY TREPTOW

| | |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

1636

| | |
|-----------|---------------|
| MAIL DATE | DELIVERY MODE |
|-----------|---------------|

08/18/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/577,084

Applicant(s)

BESTEL-CORRE ET AL.

Examiner

NANCY VOGEL

Art Unit

1636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2 and 4-13 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1, 2, 4-13 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date ____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

The following is a restriction requirement that replaces the previous Restriction Requirement mailed 4/1/09. Applicant may phone the Examiner directly with an election if desired.

Election/Restrictions

This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

Strains of microorganisms which have:

- a) deletion of one more of the 2 genes coding for at least one of a quinone oxidoreductase and a soluble transhydrogenase, (pick one),
- b) deletion of one or more of the 6 genes encoding phosphoglucose isomerase, or a phosphofructokinase, or a 6-phosphogluconate dehydratase, or a malate synthase or an isocitrate lyase or an isocitrate dehydrogenase kinase/phosphatase (pick one),
- c) modification of one or more of the 2 genes encoding at least one of a dihydrolipoamide dehydrogenase and a glyceraldehyde 3-phosphate dehydrogenase so as to cause it to utilize NADP preferentially (pick one),
- d) overexpressed one or more of the 5 genes coding for a glucose 6-phosphate dehydrogenase or a 6-phosphogluconolactonase, or a 6-phosphogluconate

dehydrogenase, or an isocitrate dehydrogenase or a membrane transhydrogenase (pick one)

e) wherein the microorganism is selected from one of 15 following strains:

Aspergillus sp., *Bacillus sp.*, *Brevibacterium sp.*, *Clostridium sp.*, *Corynebacterium sp.*,
Escherichia sp., *Gluconobacter sp.*, *Penicillium sp.*, *Pichia sp.*, *Pseudomonas sp.*,
Rhodococcus sp., *Saccharomyces sp.*, *Streptomyces sp.*, *Xanthomonas sp.* and
Candida sp. (pick one)

f) wherein the strain is used in the method of claim 12 to produce one of the following 8 substances of interest that is an amino acid, or a vitamin, a sterol, a flavonoid, a fatty acid, an organic acid, a polyol, or a hydroester (pick one).

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. A single strain, containing a single combination of genetic alterations as listed above (with the option of a strain which does not contain one of the above b)-d) modifications), a single type of microorganism, and a single product, should be elected. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include

all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The claims are deemed to correspond to the species listed above in the following manner:

Depending on species of strain modifications elected, various claims will correspond to the elected species. For instance, if deletion of one of phosphoglucose isomerase or a phosphofructokinase are not present in the elected species, claim 4 does not correspond to the elected species. Number of species possible are too numerous to list.

The following claim(s) are generic: 1, 2, 4-13.

The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: the species lack the same or corresponding special technical features, since the special technical feature of the species is the particular enzyme structure and function of each listed enzyme, and the particular microorganism, and the particular product or substance, each of which has a distinct chemical structure and activity.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NANCY VOGEL whose telephone number is (571)272-0780. The examiner can normally be reached on 7:00 - 3:30, Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low can be reached on (571) 272-0951. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/NANCY VOGEL/

Application/Control Number: 10/577,084

Page 6

Art Unit: 1636

Primary Examiner, Art Unit 1636

NV

8/13/09